

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Case No. 09-34784-SGJ-7
ONDOVA LIMITED COMPANY,	§	Chapter 7
	§	
Debtor.	§	

MOTION TO AUTHORIZE TRUSTEE TO TRANSFER PROPERTY

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 110 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496 BEFORE CLOSE OF BUSINESS ON MAY 15, 2020, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Spamhaus Project, Ltd. ("Spamhaus"), as a party-in-interest of the above-captioned case, hereby files this Motion to Authorize Trustee to Transfer Property (the "Motion"). In support of the Motion, Spamhaus would respectfully show as follows:

I.

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding.

II.

FACTS

2. Ondova Limited Company (“Ondova” or the “Debtor”) filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on July 27, 2009.

3. On September 17, 2009, this Court approved the appointment of Daniel J. Sherman as Chapter 11 Trustee. On February 16, 2016, the case converted to Chapter 7 and Mr. Sherman was appointed as the Chapter 7 Trustee ("Trustee") of the Debtor's bankruptcy estate.

4. On September 18, 2014 the World Organization Arbitration and Mediation Center (“WIPO”) issued a decision ordering Ondova to transfer the Domain Name Spamhaus.com (the "Domain Name") to Spamhaus.

5. Under the Uniform Domain Name Dispute Resolution Policy 4(k)¹, the respondent in a WIPO action has ten business days after a decision is issued to notify the WIPO Panel that a lawsuit was commenced by respondent, at which time the WIPO Panel will not implement its decision.

6. According to the WIPO Decision, for the past decade, the website accessed through the Domain Name has shown either a generic parking page or an offer to sell the Domain Name. *See* Ex. A at § 4.

¹ <https://www.icann.org/resources/pages/policy-2012-02-25-en#4a>

7. According to the WHOIS data² for the Domain Name, attached as Exhibit B, Ondova is currently the listed registrant of the Domain Name.

8. In his decision, the WIPO panelist found that Ondova lacked any rights or legitimate interests in the Domain Name and it was registered and used in bad faith by Ondova to take advantage of the association with Spamhaus's website spamhaus.org. WIPO decided that Ondova acted in bad faith because Spamhaus has held the European trademark on the word Spamhaus since 1999 and has used the domain spamhaus.org since 1999. *See* Ex. A at § 6(c).

III.

ARGUMENT

9. Spamhaus seeks, and is entitled to, the Court granting authorization for the Trustee to take whatever measures are necessary to transfer the Domain Name from Ondova to Spamhaus.

10. Here, cause clearly exists to transfer the Domain Name, based upon the Debtor's lack of good faith as determined in the WIPO decision, because cyber-squatting on a domain name that uses the prior-registered trademark of another entity is indicative of bad faith.³ The irreparable prejudice and harm that will be suffered by the Spamhaus absent the granting of the relief requested herein, and also based upon equitable considerations.

11. Secondly, if this Court does not permit compliance with the WIPO Decision by authorizing the Trustee to transfer the Domain Name to Spamhaus, Spamhaus will continue to be severely prejudiced and suffer significant and irreparable harm. Domain names with the .com

² WHOIS data is identifying and contact information provided by website owners to registrars accredited by the Internet Corporation for Assigned Names and Numbers, which is commonly referred to as ICANN. *See* <https://whois.icann.org/en/about-whois>

³ *See* Ex. A at § 6(c).

extension have become synonymous with the internet. Nearly half of all registered domain names are .com domains.⁴ Because of their ubiquity, it is also easier for owners of .com domains to brand, promote, or grow their website. Therefore, if a competitor obtained the Domain Name from the Trustee, Spamhaus, with its .org domain extension, could lose all the goodwill and recognition that it has built up over the years in its brand and trademark causing significant and irreparable harm.

12. Notwithstanding, cause also exists independently of any determination of the Debtor's bad faith on equitable grounds because the Domain Name belongs to Spamhaus since WIPO has already ordered the Domain Name to be transferred to Spamhaus.⁵ Furthermore, no other party could receive the Domain Name because any internet domain name registrar would be bound by the WIPO Decision.⁶

13. Accordingly, Spamhaus respectfully request that the Court grant the Trustee authorization to take any necessary actions to transfer the Domain Name to Spamhaus's control.

IV.

REQUEST FOR RELIEF

BASED UPON THE FOREGOING, Spamhaus respectfully requests that this Court enter an order (i) authorizing the Trustee to take any necessary actions to transfer the Domain Name to Spamhaus's control; and (ii) granting Spamhaus such other and further relief to which it is justly entitled.

⁴ <https://www.statista.com/statistics/265677/number-of-internet-top-level-domains-worldwide/>

⁵ See Ex. A at § 7.

⁶ See *id.*

Dated: April 22, 2020

Respectfully submitted,

/s/ R. Adam Swick

R. Adam Swick

REID COLLINS & TSAI LLP

1301 S. Capital of Texas Hwy.

Suite C300

Austin, Texas 78746

T: 512-647-6110

F: 512-647-6129

Email: aswick@rctlegal.com

Counsel for Spamhaus Project, Ltd.

CERTIFICATE OF CONFERENCE

I hereby certify that I communicated with Daniel J. Sherman regarding the Motion and the Trustee the does not oppose the relief requested.

/s/ R. Adam Swick

R. Adam Swick

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **MOTION TO AUTHORIZE TRUSTEE TO TRANSFER PROPERTY** was sent either electronically by the clerk of court on April 22, 2020 or via first class United States mail, postage prepaid to each of the below-listed parties and to the parties included on the attached Label Matrix on April 22, 2020.

Ondova Limited Company
P. O. Box 111501
Carrollton, TX 75006
Debtor

U.S. Trustee
1100 Commerce Street
Room 976
Dallas, TX 75242-1496

Comerica Incorporated
c/o Meagan Martin
Strong Slater & Johnson LLP
1701 N. Market Street, Suite 200
Dallas, Texas 75202

Grupo Andrea S.A. de C.V.
c/o Mark E. Andrews
Cox Smith Matthews Incorporated
1201 Elm Street, Suite 3300
Dallas, TX 75270

Peter S. Vogel, Receiver
c/o Jeffrey R. Fine
Dykema Gossett PLLC
1717 Main St., Suite 4000
Dallas, Texas 75201

/s/ R. Adam Swick

R. Adam Swick

Label Matrix for local noticing

0539-3

Case 09-34784-sgj7

Northern District of Texas

Dallas

Wed Apr 22 13:03:40 CDT 2020

Pendergraft & Simon, LLP

2777 Allen Parkway, Suite 800

Houston, Tx 77019-2129

Stromberg Stock, PLLC

8750 N Central Expy

Ste 625

Dallas, TX 75231-6452

U.S. Attorney General

Department of Justice

Washington, DC 20001

ABC Liquors, Inc.

Allen Dyer Doppelt Milbrath & Gilchrist

Attention: Allison Imber

255 South Orange Avenue, Suite 1401

Orlando, FL 32801-3460

Attorney General of Texas

Taxation Division-Bankruptcy

P.O. Box 12548

Capitol Station

Austin, TX 78711-2548

Bennett, Weston, LaJone & Turner, P.C.

Attn: Glenn A. Portman, Of Counsel

1750 Valley View Lane, Suite 120

Dallas, TX 75234-9010

Brinks Network, Inc.

CO Thompson Coburn, LLP

Attention: Mark Sableman

One US Bank Plaza

St. Louis, MO 63101-1612

Christopher A. Payne

Law Offices of Christopher A. Payne, PLL

5055 Addison Circle, Unit 428

Addison, Texas 75001-6322

DaVita, Inc.

CO Mintz Lerin

Attention: Susan Weller

701 Pennsylvania Avenue, N.W.

Washington, DC 20004-2608

Carrington Coleman Sloman & Blumenthal, LLP

c/o J. Michael Sutherland

901 Main Street

Suite 5500

Dallas, TX 75202-3767

Reyna Hinds & Crandall

1201 Elm, Suite 3850

Dallas, TX 75270-2183

Textura Corporation

Michael Best & Friedrich LLP

Attn: Katrina Hull

100 E. Wisconsin Avenue, Suite 3300

Milwaukee, WI 53202-4108

United States Trustee

1100 Commerce Street

Room 976

Dallas, TX 75242-0996

(c)ALDOUS LAW FIRM

ATTENTION: CHARLA ALDOUS

2305 CEDAR SPRINGS RD STE 220

DALLAS TX 75201-6953

BMF IT Services, LLC

610 E Main St No. 403

Allen, TX 75002-3089

Bickel and Brewer

Attention: John Bickel

1717 Main Street, Suite 4800

Dallas, TX 75201-7362

Bullwinkel Partners, Ltd.

19 South La Salle Street Suite 1300

Chicago, IL 60603-1406

Comerica Incorporated

C/O Meagan Martin

Strong Slater & Johnson LLP

1701 N. Market Street, Suite 200

Dallas, Texas 75202-1821

Daniel J. Sherman, Trustee

CO Jay H. Ong

Munsch Hardt Kopf & Harr, P.C.

303 Colorado Street, Suite 2600

Austin, TX 78701-0021

Franklin Skierski Lovall Hayward LLP

10501 N. Central Expwy., Ste. 106

Dallas, TX 75231-2203

Sedo.com,LLC

161 First St

Cambridge, MA 02142-1211

U.S. Attorney

1100 Commerce, 3rd Floor

Dallas, TX 75242-1074

1100 Commerce Street

Room 1254

Dallas, TX 75242-1305

Asia Trust Limited, as Trustee of The Villag

Bailey, Johnson and Lyon, PLLC

6401 W. Eldorado Parkway, Suite #23

McKinney, TX 75070-5887

Board of Regents of the University of Texas

CO Liz Boydston

Fulbright & Jaworski LLP

2200 Ross Avenue, Suite 2800

Dallas, TX 75201-2784

Carrington, Coleman, Sloman & Blumenthal, L.

Attn: J. Michael Sutherland

901 Main Street, Suite 5500

Dallas, TX 75202-3767

Comerica Incorporated

CO Miller Canfield

Attention: Kristen Spano

150 West Jefferson, Suite 2500

Detroit, MI 48226-4415

Dennis Klienfeld

CO Tom Bolt and Associates

Attention: Rosh Alger

5600 Royal Dane Mall

St. Thomas, U.S. Virgin Islands 00802-6410

Digital Discovery
8131 LBJ Freeway, Suite 325
Dallas, TX 75251-4603

Elizabeth Morgan Schurig
Schurig Jetel Beckett Tackett
100 Congress Avenue, 22nd Floor
Austin, TX 78701-2747

Equivalent Data
325 St. Paul Street
Dallas, TX 75201-3801

Fee, Smith, Sharp & Vitullo, LLP
Attention: Louie Vitullo
13155 Noel Road, Suite 100
Dallas, TX 75240-5050

Four Points Management, LLP
CO Tom Bolt and Associates
Attention: Rosh Alger
5600 Royal Dane Mall
St. Thomas, U.S. Virgin Islands 00802-6410

Friedman & Feiger, L.L.P.
5301 Spring Valley Road
Suite 200
Dallas, TX 75254-2488

Friedman & Feiger, L.L.P.
CO Ryan K. Lurich, Esq.
5301 Spring Valley Road, Suite 200
Dallas, TX 75254-2488

Friedman & Feiger, LLP
Attention: Jim Krause
5301 Spring Valley Road, Suite 200
Dallas, TX 75254-2488

Gary G. Lyon, Esq.
Attorney at Law
PO Box 1227
Anna, TX 75409-1227

Graebel Van Lines, Inc.
16346 Airport Circle
Aurora, CO 80011-1558

Grupo Andrea S.A. de C.V.
CO Mark E. Andrews
Cox Smith Matthews Incorporated
1201 Elm Street, Suite 3300
Dallas, TX 75270-2115

Grupo Andrea S.A. de C.V.
Michael A. Grow, Esq.
Argent Fox LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5303

HCB, LLC
CO Payne & Blanchard, LLP
Attention: Frank Perry
Plaza of the Americas, 500 North Tower
700 N. Pearl Street, LB 393
Dallas, TX 75201-2824

Howard and Morissa Hamburger
CO Wolf Rifkin
Attention: Charles Harder, Esq.
11400 W. Olympic Blvd, 9th Floor
Los Angeles, CA 90064-1582

Igiana Consulting, LLC
co Craig A. Capua
West and Associates, L.L.P.
PO Box 3960
Dallas, TX 75208-1260

Iguana Consulting, LLC
CO West & Associates, LLP
Attention: Royce West
P.O. Box 3960
Dallas, TX 75208-1260

Internal Revenue Service
Centralized Insolvency Operations
P. O. Box 7346
Philadelphia, PA 19101-7346

Jeffrey Baron
CO Gerrit M. Pronske
Pronske & Patel, P.C.
2200 Ross Avenue, Suite 5350
Dallas, TX 75201-7903

Jeffrey Baron
PO Box 111501
Carrollton, TX 75011-1501

Kapalua Land Company, Ltd.
CO Cades Schutte
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4298

Kennametal, Inc.
Attention: Mathew Gordan
1600 Technology Way
Latrobe, PA 15650-4647

Kwik-Sew Pattern Co., Inc.
CO Kovalchuk Law Offices, P.A.
Attention: Mark P. Kovalchuk
P.O. Box 32371
Minneapolis, MN 55432-0371

Lain Faulkner & Co., PC
400 N. St. Paul Street, Suite 600
Dallas, TX 75201-6897

Laurie Spindler Huffman, Esq.
Linebarger, Goggan, Blair & Sampson, LLP
2323 Bryan St., Ste 1600
Dallas, TX 75201-2637

Liberty Media Holdings, Inc.
CO A. Dale Manicom
1205 J Street, Suite B
San Diego, CA 92101-7500

Linda Mays
114 London Way
Coppell, TX 75019-3328

Locke Lord Bissell & Liddell LLP
2200 Ross Ave, Suite 2200
Dallas, TX 75201-2748

Manila Industries, Inc.
CO Locke, Lord, Bissell & Liddell, LLP
Attention: John MacPete
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-2748

Marshden, LLC
CO Tom Bolt and Associates
Attention: Rosh Alger
5600 Royal Dane Mall
St. Thomas, U.S. Virgin Islands 00802-6410

Martin K. Thomas
P.O. Box 36528
Dallas, TX 75235-1528

Mateer and Shaffer
325 Saint Paul Street
Dallas, TX 75201-3801

Maui Land & Pineapple Company, Inc.
CO Cades Schutte
Attention: Martin Hsla
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4298

Munish Krishan
CO Locke, Lord, Bissell & Liddell, LLP
Attention: John MacPete
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-2748

Nace & Motley, LLP
Kristi Motley
100 Crescent Court, 7th Fl
Dallas, TX 75201-6900

Netsphere, Inc.
CO Locke, Lord, Bissell & Liddell, LLP
Attention: John MacPete
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-2748

Novo Point, LLC
CO Eric J. Taube
Hohmann, Taube & Summers, L.L.P.
100 Congress Ave., Suite 1800
Austin, TX 78701-4042

Novo Point, LLC
co Craig A. Capua
West and Associates, L.L.P.
PO Box 3960
Dallas, TX 75208-1260

Oleg Cassini, Inc.
CO Reppert Kelly LLC
Attention: J. Vincent Reppert
403 King George Road, Suite 201
Basking Ridge, NJ 07920-2821

Ondova Limited Company
P. O. Box 111501
Carrollton, TX 75011-1501

Owens, Clary & Aiken, L.L.P.
CO Dana M. Campbell
700 North Pearl Street, Suite 1600
Dallas, TX 75201-4148

P. H. Glatfelter Company
Attention: Lynn Rzonca
96 South George Street, Suite 500
York, PA 17401-1434

Peter S. Vogel, Receiver
c/o Jeffrey R. Fine
Dykema Gossett PLLC
1717 Main St., Suite 4000
Dallas, Texas 75201-7332

Powers Taylor LLP
Powers Taylor LLP
8150 North Central Expressway
Suite 1575
Dallas, TX 75206-1837

Pronske & Patel, P.C.
2200 Ross Ave. Ste. 5350
Dallas, TX 75201-7903

Protega
7801 Alamo Drive
Plano, TX 75025

Quantec LLC
CO James M. Eckels, Esq.
7505 John Carpenter Frwy.
Dallas, TX 75247-4824

Quantec, LLC
CO Eric J. Taube
Hohmann, Taube & Summers, L.L.P.
100 Congress Ave., Suite 1800
Austin, TX 78701-4042

Quantec, LLC
CO West & Associates, LLP
Attention: Royce West
P.O. Box 3960
Dallas, TX 75208-1260

Quantec, LLC
co Craig A. Capua
West and Associates, L.L.P.
PO Box 3960
Dallas, TX 75208-1260

Randal Shaffer
PO Box 5129
Dallas, TX 75208-9129

Rasansky Law Firm
2525 McKinnon, Suite 625
Dallas, TX 75201-1550

Realty Investment Management, LLC
CO Payne & Blanchard, LLP
Attention: Frank Perry
Plaza of the Americas, 500 North Tower
700 North Pearl Street, LB 393
Dallas, TX 75201-2824

Rowbotham and Associates
101 Second Street, Suite 1200
San Francisco, CA 94105-3653

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0213

Securities and Exchange Commission
175 W. Jackson Boulevard
Suite 900
Chicago, IL 60604-2908

ServiceMaster Brands, L.L.C.
Attention: Kevin S. MacKinnon
860 Ridge Lake Blvd. Ste. A3-4008
Memphis, TN 38120-9408

Sherman & Yaquinto, LLP
509 N. Montclair Avenue
Dallas, TX 75208-5450

Simple Solutions
CO Payne & Blanchard, LLP
Attention: Frank Perry
Plaza of the Americas, 500 North Tower
700 North Pearl Street, LB 393
Dallas, TX 75201-2824

Texas Employment Commission
TEC Building - Taxation Department
Austin, TX 78778-0001

(p)THE BECKHAM GROUP
3400 CARLISLE STREET
SUITE 550
DALLAS TX 75204-0354

The University of Texas at Austin
Office of the V.P. for Legal Affairs
Box R
Austin, TX 78713-8918

Tramortina USA, Inc.
12955 West Airport Blvd
Sugar Land, TX 77478-6119

Travelers Indemnity Company
CO Oppenheimer Law Firm
Attention: Aaron M. Scott
Plaza VAIL, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402-1614

US Trustee
1100 Commerce St.
Room 976
Dallas, TX 75242-0996

VeriSign, Inc.
CO Angela B. Degeyter
Vinson & Elkins L.L.P.
2001 Ross Ave., Suite 3700
Dallas, TX 75201-2975

Western & Southern Financial Group
Attention: Jonathon D. Niemeyer
400 Broadway
Cincinnati, OH 45202-3312

Wright Ginsberg Brusilow, P.C.
1401 Elm St, Suite 4750
Dallas, TX 75202-2932

Christopher A. Payne
Law Office of Christopher A. Payne, PLLC
5055 Addison Cr., Unit 428
Addison, TX 75001-6322

Daniel J. Sherman
509 N. Montclair
Dallas, TX 75208-5450

Gary G Lyon
Bailey, Johnson and Lyon, PLLC
6401 W Eldorado Pkwy
Suite 234
McKinney, TX 75070-6199

Gary N. Schepps
12655 N. Central Expwy, Ste 812
Dallas, TX 75243-1756

Jeffrey Baron
Pronske & Patel, P.C.
2200 Ross Avenue
Suite 5350
Dallas, TX 75201-7903

Jonathan L. Howell
McCathern PLLC
3710 Rawlins St., Ste. 1600
Dallas, TX 75219-4258

Leonard Harvey Simon
Pendergraft & Simon, LLP
2777 Allen Parkway, Suite 800
Houston, Tx 77019-2129

Ravi Puri
Manila Industries and Netsphere
co Attorney, John W. MacPete
2200 Ross Ave., Ste 2200
Dallas, TX 75201-2748

Raymond J. Urbanik
Lathrop GPM LLP
2101 Cedar Springs Road
Suite 1400
Dallas, TX 75201-2134

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

The Beckham Group
3400 Carlisle Ave., Ste 550
Dallas, TX 75204

Addresses marked (c) above for the following entity/entities were corrected
as required by the USPS Locatable Address Conversion System (LACS).

Aldous Law Firm
Attention: Charla Aldous
2305 Cedar Springs Rd, Suite 200
Dallas, TX 75201

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Comerica Incorporated

(u)Genovese Joblove & Battista, P.A.

(u)Hohmann, Taube & Summers, L.L.P.

(u)Petfinders, LLC

(u)Aldous Law Firm

(u)Grupo Andrea, S.A. de C.V.

(u)HCB, LLC

(u)Iguana Consulting, LLC

(u)Manila Industries, Inc.

(u)Marshden, LLC

(u)Munsch Hardt Kopf & Harr, P.C.

(u)Netsphere, Inc.

(u)Novo Point, LLC

(d)Owens, Clary & Aiken, LLP
CO Dana M. Campbell
700 North Pearl Street Suite 1600
Dallas, TX 75201-4148

(u)Payne and Blanchard, LLP

(u)Quantec, LLC

(u)Rasansky Law Firm

(u)Realty Investment Management, LLC

(d)Stromberg Stock, PLLC
8750 N Central Expy, Ste 625
Dallas, TX 75231-6452

(u)The Village Trust

(u)VeriSign, Inc.

(u)Charla G. Aldous

(u)Denis Kleinfeld

(u)Jeffrey Baron

(u)Lisa Katz

(u)Peter S. Vogel

(u)Randal Shaffer

End of Label Matrix

Mailable recipients 105

Bypassed recipients 27

Total 132